IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 759 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

JANSATTA KARYALAYA

Appearance:

1. Criminal Appeal No. 759 of 1986

MR IM PANDYA, APP, for the appellant

Mr JG SHAH for Respondent No.1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 04/07/2002

ORAL JUDGEMENT

Heard Mr IM Pandya, learned APP for the appellant and learned Senior Counsel Mr J.G. Shah for the respondent no.1. The appellant has preferred this appeal from the order summarily dismissing the complaint of the appellant on the ground of absence. The respondents were

acquitted by the impugned order dated 7th April 1986.

2 It appears from the record that after admission of this appeal on 18.9.1987 the respondents were not immediately served. It is submitted by learned Senior Counsel Mr J.G. Shah that during the passage of long period of more than 15 years, the constitution and management of the respondent no.1 has undergone material change and respondent no.2 has since long left the service as the Personnel Manager of the respondent no.1. Therefore, as yet respondent no.2 is not served. On the other hand, original complaint was in respect of a petty offence under the provisions of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 wherein the maximum punishment which could have been imposed was fine of Rs.200/-. Even on merits it was pointed out that under the provisions of Section 256 the learned Judicial Magistrate First Class was fully justified and in fact duty bound to acquit the accused on the ground of non-appearance of the complainant. It was further submitted that any order of remand or re-trial shall not serve any useful purpose.

3 In view of the aforesaid facts and circumstances, relying upon the judgement of the Honourable Supreme Court in State of Assam v. Abdul Halim reported in 1992 SC 2068 and State of Maharashtra v. Baburao Kindu Patil reported in 1993 Supp. (1) SCC 456, in view of absence of any illegality in strict sense of the term in the impugned order and in view of the prolonged pendency of this appeal, it is held that the appeal is not required to be allowed. Accordingly, it is dismissed with no order as to costs.

(D.H.Waghela, J.)
(mohd)